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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,932	11/21/2001	Robert J. Sicurelli JR.	CONTINUATION-11-D1	4222
4988	7590	07/12/2005	EXAMINER	
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			WILSON, JOHN J	
			ART UNIT	PAPER NUMBER
			3732	
DATE MAILED: 07/12/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/990,932

Applicant(s)

SICURELLI ET AL.

Examiner

John J. Wilson

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-35, 38-40, 42, 44-46, 50, 52-61, 64, 65 and 70-92 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-35, 38-40, 42, 44-46, 50, 52-61, 64, 65 and 70-92 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33, 34, 50, 52-58 and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Weissman (5326263). Weissman shows a post 17 comprising fiberglass. Fiberglass is a composite of glass in a resin, and therefore, meets the limitation of a fiberglass composite. The shown post 17 inherently flexes to some degree, and therefore, inherently meets the limitation of flexible. The shown post 17 has a length that is capable of extending the length of a tooth canal as shown, Fig. 10. The shown post 17 is prefabricated. All of the claimed structure being met, the use as an endodontic reinforcement post is merely intended use and is given no patentable weight. As to claim 34, Weissman teaches that post 17 passes light, and therefore, inherently has a degree of translucency. As to claim 56, the flexibility of the post with respect to a tooth structure is as broad as there exists different tooth structures with different flexibility properties, and therefore, the shown post is held to meet this broad limitation. As to claim 77, to call the post 17, a pin, is merely terminology, and therefore, is given no patentable weight.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33, 35, 38, 40, 42, 44-46, 50, 53-61, 64, 65, 70, 71, 74-76, 78-82, 84, 85, 88, 89, 91 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929). Reynaud shows a post having non-metallic and non-woven fibers 5 in a resin 4. The fibers and resin of Reynaud are inherently flexible to some degree, however, Reynaud shows using carbon fibers not glass. Albert teaches the use of alternative fibers including carbon or glass, column 2, lines 59-65. It would be obvious to one of ordinary skill in the art to modify Reynaud to include the use of glass fibers as suggested by Albert in order to make use of known alternative materials in order to obtain the desired known properties of those materials. Reynaud teaches matching properties of the tooth. To use the inherently more flexible glass to better match such properties would have been obvious to one of ordinary skill in the art. The specific shape of the post used is an obvious matter of choice in shape to best match the canal. The specific type of glass fibers used is an obvious matter of choice in known materials to one of ordinary skill in the art. The specific type of resin used is an obvious matter of choice in the use of known materials to the skilled artisan.

Claims 34 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Kwiatkowski (4936776). The above combination does not show translucent. Kwiatkowski teaches using a translucent post. It would be obvious to one of ordinary skill in the art to modify the above combination to include a translucent post as shown by Kwiatkowski in order to preserve the normal look of a tooth.

Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Al Kasem (5326264). The above combination does not show using an opaque material. Al Kasem teaches using an opaque filler, column 18, line 19. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of an opaque material as shown by Al Kasem in order to make use of known materials for best matching the tooth.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Weissman (5326263). The above combination does not show an end shaped to direct light. Weissman shows an end shaped to direct light, Fig. 6. It would be obvious to one of ordinary skill in the art to modify the above combination to include a shaped end as shown by Weissman in order to direct light. To shape the end

by polishing is an obvious matter of choice in the process used to obtain a known structure to the skilled artisan.

Claims 72 and 73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) and Al Kasem (5326264) as applied to the claim 39 above, and further in view of Fujisawa et al (4931096). The above combination does not show the use of a radio opaque material. Fujisawa teaches the use of radio opaque material including barium sulfate, column 2, lines 10-16. It would be obvious to one of ordinary skill in the art to modify the above combination to include radio opaque material as shown by Fujisawa in order to enable the material to show up on radiograph.

Claims 83, 86 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynaud et al (5328372) in view of Albert (5564929) as applied to the claims above, and further in view of Fujisawa et al (4931096). The above combination does not show the use of a radio opaque material. Fujisawa teaches the use of radio opaque material including barium sulfate, column 2, lines 10-16. It would be obvious to one of ordinary skill in the art to modify the above combination to include radio opaque material as shown by Fujisawa in order to enable the material to show up on radiograph.

### ***Response to Arguments***

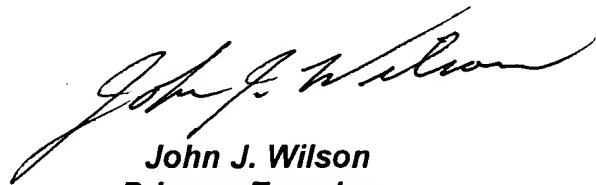
Applicant's arguments filed May 24, 2005 have been fully considered but they are not persuasive. Applicant's arguments with respect to the claims have been considered but are not deemed persuasive because of the newly applied reference to Weissman (5326263) and because the parent application 08/126,631, now Patent No. 5,518,399, of the present application, teaches using a fiberglass composite only with respect to one embodiment shown in Figs. 1-3 to a glass rod and not the embodiment including fiber bundles as claimed in the present application, therefore Albert is prior art. The term prefabricated is merely defining a method of use and/or a method of the time at which a process of making step is preformed, and therefore, is met by the shown structure of the prior art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is 571-272-4722). The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "John J. Wilson", is written over a light gray, stylized signature line.

**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
February 21, 2005